Case No. 83-5776

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1982

CHARLES TROY COLEMAN,

Petitioner,

vs.

THE STATE OF OKLAHOMA

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

RESPONDENT'S BRIEF IN OPPOSITION

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December, 1983

QUESTIONS PRESENTED

1. Whether the Petitioner's Fourteenth Amendment rights were violated by the search of the Petitioner's vehicle when, during the course of an inventory search, law enforcement officers became aware that items in the vehicle were evidence of a murder committed approximately two hours earlier and therefore, ceased their inventory search of the vehicle, impounded it and then seized the contents of the vehicle at the police station.

2. Whether the bill of particulars which was served upon the Petitioner prior to trial was violative of the Petitioner's rights under the Due Process Clause of the Fourteenth Amendment.

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Case No. 83-5776

IN THE SUPREME COURT OF THE UNITED STATES

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CHARLES TROY COLEMAN,

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vs.

THE STATE OF OKLAHOMA

Respondent.

On Petition for a Writ of Certiorari to the Court of Criminal Appeals of the State of Oklahoma

RESPONDENT'S BRIEF IN OPPOSITION

The respondent State of Oklahoma, by and through Michael C. Turpen, Attorney General of the State of Oklahoma, respectfully requests that this Court deny the Petition for Writ of Certiorari seeking review of the opinion of the Oklahoma Court of Criminal Appeals.

OPINION BELOW

The Opinion of the Oklahoma Court of Criminal Appeals is reported at 668 P.2d 1126 (Okl.Cr. 1983).

JURISDICTION

The Opinion of the Oklahoma Court of Criminal Appeals was entered on July 11, 1983 and corrected on September 19, 1983. A Petition for Rehearing was also denied on September 19, 1983. This Court's jurisdiction is invoked under 28 U.S.C. § 1257(3).

CONSTITUTIONAL AND STATUTORY

PROVISIONS INVOLVED

The Fourth Amendment to the United States Constitution provides as follows:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

The Fourteenth Amendment to the United States Constitution provides in part:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law."

Title 21 O.S.Supp.1976, § 701.7 provided in part:

> "A. A person commits murder in the first degree when he unlawfully and with malice aforethought causes the death of another human being. Malice is that deliberate intention unlawfully to take away the life of a human being, which is manifested by external circumstances capable of proof."

Title 21 O.S.Supp.1976, § 701.9 provided in part:

> "A. A person who is convicted of or pleads guilty or nolo contendere to murder in the first degree shall be punished by death or by imprisonment for life."

Title 21 O.S.Supp.1976, § 701.10 provided as follows:

> "Upon conviction or adjudication of guilt of a defendant of murder in the first degree, the court shall conduct a separate sentencing proceeding to determine whether the defendant should be sentenced to death or life imprisonment. The proceeding shall be conducted by the trial judge before the trial jury as soon as practicable without presentence investigation. If the trial jury has been waived by the defendant and the state, or if the defendant pleaded guilty or nolo contendere, the sentencing proceeding shall be conducted before the court. In the sentencing proceeding, evidence may be presented as to any mitigating circumstances or as to any of the aggravating circumstances enumerated in this act. Only such evidence in aggravation as the state has made known to the defendant prior to his trial shall be admissible. However, this section shall not be construed to

authorize the introduction of any evidence secured in violation of the Constitutions of the United States or of the State of Oklahoma. The state and the defendant or his counsel shall be permitted to present argument for or against sentence of death."

Title 21 O.S.Supp.1976, § 701.11 provided as follows:

"In the sentencing proceeding, the statutory instructions as determined by the trial judge to be warranted by the evidence shall be given in the charge and in writing to the jury for its deliberation. The jury if its verdict be a unanimous recommendation of death, shall designate in writing, signed by the foreman of the jury, the statutory aggravating circumstance or circumstances which it unanimously found beyond a reasonable doubt. In non-jury cases the judge shall make such designation. Unless at least one of the statutory aggravating circumstances enumerated in this act is so found or if it is found that any such aggravating circumstance is outweighed by the finding of one or more mitigating circumstances, the death penalty shall not be imposed. If the jury cannot, within a reasonable time, agree as to punishment, the judge shall dismiss the jury and impose a sentence of imprisonment for life."

Title 21 O.S.Supp.1976, § 701.12 provided as follows:

"Aggravating circumstances shall be:

1. The defendant was previously convicted of a felony involving the use or threat of violence to the person;

2. The defendant knowingly created a great risk of death to more than one person;

3. The person committed the murder for remuneration or the promise of remuneration or employed another to commit the murder for remuneration or the promise of remuneration;

4. The murder was especially heinous, atrocious, or cruel;

5. The murder was committed for the purpose of avoiding or preventing a lawful arrest or prosecution;

6. The murder was committed by a person while serving a sentence of imprisonment on conviction of a felony; or

7. The existence of a probability that the defendant would commit criminal acts of violence that would constitute a continuing threat to society."

Title 21 O.S.Supp.1976, § 701.13 provided as follows:

"A. Whenever the death penalty is imposed, and upon the judgment becoming final in the trial court, the sentence shall be reviewed on the record by the Oklahoma Court of Criminal Appeals. The clerk of the trial court,

within ten (10) days after receiving the transcript, shall transmit the entire record and transcript to the Oklahoma Court of Criminal Appeals together with a notice prepared by a clerk and a report prepared by the trial judge. The notice shall set forth the title and docket number of the case, the name of the defendant and the name and address of his attorney, a narrative statement of the judgment, the offense, and the punishment prescribed. The report shall be in the form of a standard questionnaire prepared and supplied by the Oklahoma Court of Criminal Appeals.

B. The Oklahoma Court of Criminal Appeals shall consider the punishment as well as any errors enumerated by way of appeal.

C. With regard to the sentence, the court shall determine:

1. Whether the sentence of death was imposed under the influence of passion, prejudice, or any other arbitrary factor;

2. Whether the evidence supports the jury's or judge's finding of a statutory aggravating circumstance as enumerated in this act; and

3. Whether the sentence of death is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant.

D. Both the defendant and the state shall have the right to submit briefs within the time provided by the court, and to present oral argument to the court.

E. The court shall include in its decision a reference to those similar cases which it took into consideration. In addition to its authority regarding correction of errors, the court, with regard to review of death sentences, shall be authorized to:

1. Affirm the sentence of death; or

2. Set the sentence aside and remand the case for modification of the sentence to imprisonment for life.

F. The sentence review shall be in addition to direct appeal, if taken, and the review and appeal shall be consolidated for consideration. The court shall render its decision on legal errors enumerated, the factual substantiation of the verdict, and the validity of the sentence."

STATEMENT OF THE CASE

On the afternoon of February 9, 1979 at approximately 4:30 p.m., Mr. and Mrs. John Seward were found dead in the basement of the home of Mr. and Mrs. B.L. Warren, in Muskogee County, Oklahoma.

Mr. Seward was Mrs. Warren's brother (Tr. 651-654). Mrs. Seward had been shot four (4) times; and Mr. Seward was shot once in the back of the head. All of the gunshot wounds were inflicted by a shotgun (Tr. 613-617,620). Numerous items of personal property were missing from the Warren residence, including the Seward's wallets, packages of frozen meat marked "Hogle, Not for Sale" a turquoise watch belonging to Mrs. Warren, and other items of food (Tr. 675,738-743).

Shortly after 6:00 p.m. that day, Ralph Rose, an off-duty dispatcher for the Wagoner County Jail (Tr. 433), was traveling along a highway outside of Muskogee, Oklahoma when the Petitioner passed him in a no passing zone (Tr. 434). Deputy Rose, attempting to communicate the danger, pointed his finger at the Petitioner. The Petitioner stopped his vehicle and approached Officer Rose, who had gotten out of his car (Tr. 435). The Petitioner cursed Deputy Rose and left the scene (P.H. Tr. 339-341). Eventually, the Petitioner was stopped by Deputy Rose for traffic violations, after he observed Jeanetta Coleman, a passenger in Petitioner's vehicle, drink from a beer can (P.H. Tr. 346,356-357). He then placed Petitioner under arrest (Tr. 442-443).

Deputy Rose, during the 100 m.p.h. chase which preceded the second stop (Tr. 440,443; P.H. Tr. 342), radioed Oklahoma Highway Patrol Trooper Glen Smithson and Wagoner County Seriff Tommy Gilbert for assistance (P.H. Tr. 341). They arrived on the scene as Deputy Rose was attempting to arrest the Petitioner (P.H. Tr. 346). After the Petitioner was arrested and handcuffed, Trooper Smithson began procedures to inventory the vehicle pursuant to routine procedures. He instructed Deputy Rose to fill out an inventory sheet (Tr. 472-473). He then looked into the front of the Petitioner's pickup and observed, laying in an open glove compartment, a wallet bearing identification of Mrs. Seward. The wallet was open. Trooper Smithson told Deputy Rose to be certain to record the wallet on the inventory list (Tr. 473).

The Petitioner was asked his own name and that of his in-laws (Tr. 474). The same inquiries were posed to Jeanetta Coleman (Tr. 474). Neither mentioned the name "Seward" (Tr. 474). At about

this time, Deputy Rose discovered packages of meat in the rear of the vehicle marked "Hogle, Not for Sale" (Tr. 474). After some conversation concerning where the Petitioner had obtained the meat, the Petitioner was placed in the rear of the police car, as was Jeanetta, and Trooper Smithson and Sheriff Tommy Gilbert transporting the Colemans to Wagoner to "run a breath test on Mr. Coleman" (P.H. 380,385).

Although at this point in time Trooper Smithson was aware that a homicide had occurred on that day, he did not realize that the defendant was in any way connected with the homicide. However, "four or five miles up the highway," he radioed to the scene of the homicide, asking if any meat had been stolen from the residence (P.H. 385). The officer responded "affirmative" and further revealed that the names of the victims were "Seward" (Tr. 482). At this point, Smithson stopped the car, handcuffed Jeanetta Coleman as well, and advised the two of their Miranda rights (Tr. 482). The Petitioner and Jeanetta were then taken to the Muskogee County Jail (Tr. 483).

At the time of booking, the Petitioner had in his possession a one hundred dollar bill, five twenty dollar bills, one five dollar bill, three one dollar bills, and one two dollar bill (Tr. 501). One of the murder victims, Mr. Seward had for years carried a two dollar bill on his person for good luck (Tr. 750). The Petitioner's pants were also seized at the time of his arrest (Tr. 510), and a blood test on the jeans revealed that there was human blood on them (Tr. 744).

The Petitioner, at 3:30 p.m. that day, had picked up a shotgun and shells from his bedroom and left in a white Ford pickup with a white camper (Tr. 311,313,316). Two teachers, Steve Kearney and Lina Hale, from a nearby school, passed by the Warren residence and around 3:30 p.m. Mr. Kearney was looking for a white pickup with a camper to mark Ms. Hale's home because that is the type of vehicle she had been driving. He began to turn into the Warren residence, thinking that it was Ms. Hale's residence, because a white pickup with a camper was parked in front, but she told him it was not the right house, that the pickup was not hers. She

commented that she had never seen that pickup there before (Tr. 687-688).

The autopsy of John Seward produced a shot cup and shotgun pellets which were removed from his brain (Tr. 618-619). Plastic wadding was removed from the chest of Roxie Seward (Tr. 621). Ballistics tests showed that these items were components of .28 guage Federal Brand shotgun ammunition (Tr. 589), and that the pellets were No. 6 size shot (Tr. 591). A shotgun and some ammunition were taken from the Petitioner's bedroom by his brother after the homicides and were given to Gary Sturm of the Muskogee County District Attorney's Office (Tr. 411-412). The shotgun was .28 guage, (Tr. 603), and the ammunition was Federal Brand .28 guage shotgun shells with No. 6 shot (Tr. 634-B).

The State also produced the testimony of Eli Maghee who was incarcerated with the Petitioner prior to trial. He stated that while he was imprisoned with the Petitioner, the Petitioner stated, "These people shouldn't have run in on him, or shouldn't have come up or come in while he was . . . there, because . . . he had no choice but to kill 'em, and that having no choice meant that he wouldn't get any more time if he killed them . . . that you just don't leave witnesses cause you got a lot less chance of getting convicted. . . ." (Tr. 565-566).

Also introduced into evidence were items found during the course of the inventory of the Petitioner's truck, which were subsequently identified by Mrs. Warren as taken from her home during the Murder-Robbery (P.H. Tr. 534-537; Tr. 537-539). Lon Hogle testified that he had given meat to the Warrens, identified the meat taken from the Petitioner truck as that which he had given to the Warrens, and further stated that he gave no meat to anyone else (Tr. 822-723). In addition, the State introduced a watch, discovered in the police car in which Jeanetta Coleman and the Petitioner had been riding on the evening of their arrest (Tr. 634-C). The watch was identified by Mrs. Warren as the one stolen during the murder of the Sewards (Tr. 737). Jeanetta Coleman testified that, while seated with the Petitioner in the police car, the Petitioner had requested her to remove a watch from the

Petitioner's pocket (Tr. 333). After Jeanetta complied with his request, the Petitioner asked for the watch back (Tr. 334), which request she attempted to honor, apparently unsuccessfully.

The Petitioner did not testify in his defense. Ted Faulkner, an inmate in the Tulsa County Jail, testified that Eli Maghee had a poor reputation for truth and veracity (Tr. 763). Joyce Murray, the Petitioner's sister, testified that she had earlier in the week given the Petitioner four hundred dollars ($400.00) (Tr. 767).

The jury convicted the Petitioner of Murder in the First Degree, in violation of 21 O.S.Supp.1976, § 701.7(A) and found five (5) aggravating circumstances: (1) the Petitioner was previously convicted of a felony involving the use or threat of violence to the person; (2) the Petitioner knowingly created a great risk of death to more than one person; (3) the murder was especially heinous, atrocious and cruel; (4) the murder was committed for the purpose of avoiding or preventing a lawful arrest or prosecution; and (5) there exists a probability that the Petitioner would commit criminal acts of violence that would constitute a continuing threat to society (O.R. 195). The jury imposed the death sentence.

REASONS WHY THE WRIT SHOULD BE DENIED

PROPOSITION I

WHERE THE PETITIONER WAS ARRESTED BY LAW ENFORCEMENT OFFICERS FOR MISDEMEANORS COMMITTED IN THEIR PRESENCE, IMPOUNDED HIS VEHICLE, COMMENCED AN INVENTORY SEARCH OF THE VEHICLE AND CEASED THE SEARCH WHEN THEY DISCOVERED THAT ITEMS INSIDE THE VEHICLE HAD BEEN TAKEN DURING THE COURSE OF A ROBBERY-MURDER COMMITTED A FEW HOURS EARLIER, NO FOURTH AMENDMENT VIOLATIONS OCCURRED.

The events which lead to the search of the Petitioner's vehicle are set forth in detail in the Opinion of the Court of Criminal Appeals and in the Statement of the Case above. See, Coleman v. State, 668 P.2d 1126, 1130-1131 (Okl.Cr. 1983). In summary, the facts revealed that the Petitioner was arrested for a misdemeanor committed in Officer Rose's presence.[1] The vehicle which the

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[1] This is authorized by Oklahoma law, 22 O.S.1981, § 196.

Petitioner was driving was impounded and the inventory was commenced by Deputy Rose upon being instructed to do such by Trooper Smithson.[2] Trooper Smithson, while assisting in the Plaintiff's arrest, observed in plain view, open wallets in the truck's glove compartment bearing the names "Seward," and a box of frozem meat stamped "Hogle, Not for Sale," in the truck's camper. The inventory was stopped when Trooper Smithson radioed the scene of the Seward's murder and discovered the victim's names were Seward and that meat marked "Hogle, Not for Sale" had been taken from the house where the murder had occurred.

After Deputy Rose stopped the inventory at the request of Trooper Smithson and Sheriff Gilbert, Agent Chrisco of the Oklahoma State Bureau of Investigation arrived at the scene and the vehicle was removed to the Muskogee Police Deprtment where the vehicle was searched and a complete inventory was made of the contents (Tr. 537-538).

The State contends that the search was in full compliance with Fourth Amendment dictates. The original stopping of the vehicle was proper. Delaware v. Prouse, 440 U.S. 648 (1979). As stated previously, the plaintiff was then arrested under Oklahoma law for misdemeanors committed in the presence of Deputy Rose. 22 O.S.1981, § 196. See, Coleman v. State, supra, 668 P.2d at 1130. Trooper Smithson's observations of the interior of the vehicle were legal. Colorado v. Bannister, 449 U.S. 1 (1980); Michigan v. Long, ___ U.S. ___, 51 U.S.L.W. 5231 (U.S. July 6, 1983); and Texas v. Brown, ___ U.S. ___, 51 U.S.L.W. 4361 (U.S. April 19, 1983).

Deputy Rose's inventory of the vehicle was also in accordance with Fourth Amendment principles. See, Illinois v. Lafayette, ___ U.S. ___, 51 U.S.L.W. 4829 (U.S. June 20, 1983); South Dakota v. Oppenman, 428 U.S. 364 (1976); and Cady v. Dombrowski, 413 U.S. 433 (1973). Thereafter, when Trooper Smithson discovered that the

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[2] The vehicle was impounded pursuant to established departmental policy (P.H. Tr. 348,380).

vehicle contained fruits of the crime of Murder-Robbery, a warrantless search of the vehicle for items related to the crime was allowable.

United States v. Ross, 456 U.S. 798 (1982). Furthermore, this search was legal whether at the scene or at the station regardless of whether the officers had the opportunity to obtain a search warrant. See, Texas v. White, 423 U.S. 67 (1975); and Michigan v. Thomas, 458 U.S. 259, 261 (1982), where it was stated:

> "It is thus clear that the justification to conduct such a warrantless search does not vanish once the car has been immobilized; nor does it depend upon a reviewing court's assessment of the likelihood in each particular case that the car would have been driven away, or that its contents would have been tampered with, during the period required for the police to obtain a warrant."

Therefore, the search of the plaintiff's vehicle and the seizure of the items inside was properly held by the Court of Criminal Appeals to be valid.

PROPOSITION II

THE BILL OF PARTICULARS GAVE THE PETITIONER SUFFICIENT NOTICE OF THE EVIDENCE WHICH WAS TO BE PRESENTED ACAINST HIM, PARTICULARLY IN VIEW OF THE FACT THAT THE SAME EVIDENCE HAD BEEN PRESENTED IN A PREVIOUS HEARING IN A DIFFERENT PROCEEDING AND THE PLAINTIFF'S ATTORNEY IN THE PRESENT CASE HAD BEEN GIVEN A COPY OF THE TRANSCRIPT OF THAT EVIDENCE.

The Petitioner complaint of the bill of particulars in the present case, contending that it insufficiently described the evidence to be presented in support of the aggravating circumstance that there exists a probability that the Petitioner would commit furture acts of violence that will constitute a continuing threat to society. See, 21 O.S.Supp.1976, § 701.12(7). The Petitioner claims that the bill of particulars does not go into sufficient detail in describing evidence that, after his escape from the Muskogee County Jail, the Petitioner kidnapped an Arizona highway patrolman.

As noted previously, this aggravating circumstance was only one of five which were found by the jury. Moreover, the evidence of the kidnapping of the Arizona highway patrol trooper was introduced partially to prove that the Petitioner had murdered a Tulsa

man, Mr. Lewis, after he had escaped from jail. The testimony of the Arizona trooper revealed that he identified the Petitioner, his gun and vehicle. This was necessary to connect the Petitioner, his gun and his vehicle with the murder of Mr. Lewis. The murder of Mr. Lewis is specifically described in the bill of particulars. See, Appendix "C" of the Petitioner's Petition.

Additionally, in support of this aggravating circumstance, the State introduced evidence of the Petitioner slashing a policeman in Luther, Oklahoma with a knife, who had stopped him after his escape; and the fact that the Petitioner also murdered another man in Tulsa, Oklahoma following his escape. The State also gave the Petitioner notice that the murders of the Sewards, the persons he was convicted of murdering in the first stage of the present case, would be used to support this same aggravating circumstance. Therefore, it is apparent that the State produced overwhelming evidence of the Petitioner's potential for future violence.

Finally, the Bill of Particulars itself (See, Appendix "G" of Petitioner's Petition), states that his escape "creat[ed] a future danger to other lives, including those of the law abiding citizens of this State, and in other areas of this nation. . . ." This, coupled with the fact that, as the Court of Criminal Appeals noted (668 P.2d at 1137), the Petitioner had notice of the details of the Arizona kidnapping by virtue of a preliminary hearing in the case involving the above-mentioned murder of the man in Tulsa,[3] demonstrates that the Petitioner had adequate notice of the evidence which would be presented.

Therefore, in view of all the circumstances surrounding the finding of that aggravating circumstance by the jury and the overwhelming nature of this evidence (which including three (3) murders, a knife slashing of a police officer and a kidnapping at gunpoint of a highway patrol trooper), no constitutional error occurred.

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[3] The Court of Criminal Appeals also noted that the Petitioner's attorney had been furnished with a copy of that transcript prior to trial. 668 P.2d at 1137. (See, Tr. 880-881).

CONCLUSION

For the reasons stated, it is respectfully requested that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

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CERTIFICATE OF MAILING

On this 15th day of December, 1983, a true and correct copy of the foregoing was mailed, postage prepaid, to:

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